

Message Text

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PAGE 01 ISLAMA 06294 300250Z
ACTION NEA-11

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C O N F I D E N T I A L ISLAMABAD 6294

E.O. 11652: GDS
TAGS: SHUM, PINT, PK
SUBJECT: BHUTTO TRIAL ABOUT TO REOPEN

REF: A) ISLAMABAD 5845, B) LAHORE 794 (NOTAL), C) KARACHI 2944 (NOTAL
)

1. SUMMARY: THE SUPREME COURT HEARING IN THE APPEAL OF FORMER PM
BHUTTO AND FOUR OTHERS ON THEIR MURDER/CONSPIRACY CONVICTIONS IS
SCHEDULED TO REOPEN IN RAWALPINDI JULY 1. THE HEARING MAY BE ABOUT TO
ENTER A NEW STAGE: EITHER THE BEGINNING OF THE FORMAL ARGUMENTS OR TH
E
HEARING OF NEW EVIDENCE AND WITNESSES. BHUTTO HAS REPORTEDLY
ASKED HIS FAMILY NOT TO APPEAL FOR MERCY TO THE PRESIDENT OR THE
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PAGE 02 ISLAMA 06294 300250Z

CHIEF MARTIAL LAW ADMINISTRATOR (CMLA) IF HIS CONVICTION AND
SENTENCE ARE UPHELD. END SUMMARY.

2. THE SUPREME COURT HEARING OF THE APPEAL OF FORMER PM BHUTTO AND FOUR
OTHERS ON THE MURDER/CONSPIRACY CONVICTIONS HANDED DOWN BY THE LAHORE
HIGH COURT IN MARCH WILL REOPEN JULY 1 IN RAWALPINDI AFTER A TWO-WEEK

RECESS (REFTEL A). THE HEARING MAY BE MOVING INTO A NEW STAGE IN THE NEXT WEEK, AS BHUTTO'S COUNSEL, YAHYA BAKHTIAR, IS NEARLY FINISHED WITH HIS PRELIMINARY READING OF TRIAL EVIDENCE.

3. ON THE BASIS OF CONVERSATIONS WITH KNOWLEDGEABLE JUDICIAL CONTACTS.

CONGEN LAHORE REPORTS (REF B) THAT THERE ARE TWO DIFFERENT WAYS THE HEARING COULD PROCEED FROM THIS POINT. AFTER BAKHTIAR FINISHES HIS READING OF THE LAHORE COURT'S TRIAL RECORD, WHICH HAS BEEN DONE TO HIGHLIGHT WHAT IS LIKELY TO BE REFERRED TO AGAIN AND TO ENSURE CONCENTRATION ON THE KEY POINTS OF EVIDENCE, HE MAY BEGIN HIS FORMAL ARGUMENT. HOWEVER, BAKHTIAR, AND, ACCORDING TO LAHORE'S SOURCES, A LAWYER FOR ONE OF THE OTHER APPELLANTS, MAY AT THIS POINT ASK THE COURT

TO HEAR NEW EVIDENCE, CALL NEW WITNESSES, AND/OR RECALL OTHERS ALREADY

HEARD IN THE LAHORE HIGH COURT TRIAL. BHUTTO HIMSELF OR THE OTHER APPELLANTS MIGHT BE HEARD BY THE COURT. IF THE COURT APPROVES (AND IT IS STRICTLY THE COURT'S CHOICE), THE WITNESSES AND THE EVIDENCE WOULD BE EXAMINED BEFORE THE FORMAL ARGUMENTS BEGIN.

4. THE IMPORTANT POINT MADE BY EXPERIENCED JURISTS IN KARACHI, AS ELSEWHERE, IS THAT INITIAL TRIAL FOR MURDER AT THE HIGH COURT LEVEL IS

NOT USUAL; HENCE, RECOURSE TO THE SUPREME COURT AS THE FIRST APPELLATE
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PAGE 03 ISLAMA 06294 300250Z

LEVEL IS ALSO NOT VERY COMMON. IN PRACTICAL TERMS, THIS MEANS THE CASE IS ALMOST SUI GENERIS; THE SUPREME COURT HAS NO FIXED PRECEDENTS TO GOVERN ITS ACTIONS OR ITS PROCEDURES IN HEARING THIS CASE. IN FACT, THE APPEAL CAN AMOUNT TO MUCH MORE THAN THE USUAL APPEAL. IT CAN, IN EFFECT, BE A RETRIAL.

5. IN ANY EVENT, THE COURT WILL ADJOURN TO WRITE ITS VERDICT AFTER IT HAS HEARD ARGUMENTS BY DEFENSE AND PROSECUTION SPOKESMAN. IF THE APPEAL IS DENIED, AND THE COURT UPHOLDS THE DEATH PENALTY, MERCY PETITIONS MAY BE SENT TO THE PRESIDENT THROUGH THE CMLA ACTING AS "PRIME MINISTER," UNDER THE 1973 CONSTITUTION. THEY COULD ALSO BE FORWARDED IN THE FIRST INSTANCE TO THE GOVERNOR OF PUNJAB SINCE THE CASE ORIGINATED IN THE LAHORE HIGH COURT. IF THE GOVERNOR, ACTING ON THE ADVICE OF THE MLA, REJECTS THE PETITIONS, A FURTHER APPEAL COULD THEN BE MADE TO THE PRESIDENT VIA THE CMLA.

6. PRESS STORIES LAST WEEK NOTE THAT BHUTTO HAS ASKED HIS NEWLY-FREED DAUGHTER, BENAZIR, NOT TO SEND A MERCY PETITION TO CMLA GENERAL ZIA IF

HIS APPEAL IS DENIED, OR IF THE DEATH SENTENCE IS UPHOLD. HE THREATENED TO "DIVORCE BOTH MY WIVES" AND DISOWN HIS CHILDREN IF THEY FOLLOW

SUCH A COURSE.

7. WHEN THE COURT WILL FINALLY DECIDE THE CASE IS STILL ANYBODY'S GUESS.

THE TWO-WEEK DELAY CAUSED BY THE CHIEF JUSTICE'S ABSENCE WAS A SURPRISE

TO MOST OBSERVERS HERE. MORE DELAYS COULD BE IN THE OFFING, INASMUCH AS THE COURT'S TRADITIONAL SUMMER RECESS BEGINS JULY 10. THE HEARINGS MIGHT BE PUSHED TO WIND UP BEFORE A DELAYED SUMMER RECESS, BUT IT WILL

PROBABLY TAKE LONGER, ESPECIALLY IF THE COURT AGREES TO HEAR ADDITIONAL WITNESSES AND NEW EVIDENCE.

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PAGE 04 ISLAMA 06294 300250Z

8. IN AN INTERESTING TWIST, THE FEDERAL INVESTIGATION AGENCY (FIA) IN QUETTA JUNE 22 REGISTERED A CASE OF ELECTION-RIGGING AGAINST YAHYA BAKHTIAR. BAKHTIAR HAD CONTESTED A NATIONAL ASSEMBLY SEAT FROM QUETTA IN THE MARCH 1977 ELECTIONS AND NOW STANDS CHARGED WITH "GRAVE IRREGULARITIES." THE GOVERNMENT, ACCORDING TO PRESS REPORTS, HAS DECIDED NOT TO PROCEED FURTHER IN THE CASE FOR THE TIME BEING SO THAT BAKHTIAR CAN "DISCHARGE HIS DUTIES UNHINDERED" IN THE BHUTTO APPEAL.

9. THIS CABLE WAS PREPARED WITH THE BENEFIT OF THOUGHTFUL AND TIMELY SUBMISSIONS FROM CONGENS LAHORE AND KARACHI. HUMMEL

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